



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 03 242 53028

Office: VERMONT SERVICE CENTER

Date: 11/1/11

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maureen

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an information technology and development business. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the education specified on the labor certification and denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). Regarding the “equivalent” of an advanced degree, the regulations state: “A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.” *Id.*

In addition to the requirements of the classification sought, we must look to the job offer portion of the labor certification to determine the required qualifications for the position. We may not ignore a term of the labor certification, nor may we impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The record contains an approved Department of Labor Form ETA-750, Application for Alien Labor Certification (labor certification). Regarding the minimum level of education and experience required for the proffered position, Part A of the labor certification reflects the following:

Item 14: Master’s Degree in Engineering (any), Computer Science, Math or Information Science.

Item 15: Will consider a Bachelor’s Degree in the above fields with five years of experience in the job offered.

The beneficiary received a baccalaureate degree in Commerce from the University of Madras after three years of study. The beneficiary’s transcript from the University of Madras includes no computer science courses. The beneficiary also obtained an honours diploma from the National Institute of Information Technology (NIIT). In response to the director’s request for additional evidence, the petitioner submitted a credentials evaluation from International Credentials Evaluation and Translation Services (ICETS). In evaluating the beneficiary’s Bachelor of Commerce degree, the evaluator stated:

Calculation based on course duration and composition in the Bachelor of Commerce program indicate that [the beneficiary] satisfied similar requirements to the completion of *three years of*

academic study towards a baccalaureate degree from an accredited institution of tertiary education in the United States.

(Emphasis added.) After considering the beneficiary's studies at the University of Madras, the evaluator evaluated the beneficiary's education that was received after his bachelor's degree. Specifically, the evaluator determined that the beneficiary's diploma from NIIT required satisfaction "of similar requirements to the completion of one year of specialized academic coursework in Computer Science in a Bachelor of Science Degree program at an accredited institution of tertiary education in the United States." Considering both degrees together, the evaluator concluded that the beneficiary "completed similar requirements to the completion of a Bachelor of Science Degree in Computer Science from an accredited institution of tertiary education in the United States."

The director concluded that the beneficiary does not have the required baccalaureate degree or its foreign equivalent degree.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) should consider the beneficiary's multiple degrees in evaluating whether the beneficiary has a "foreign equivalent degree." Counsel submits a copy of a letter dated January 7, 2003, from [REDACTED] III, Director of the Business and Trade Services Branch of CIS's Office of Adjudications (Office of Adjudications letter). This letter discusses whether a "foreign equivalent degree" must be in the form of a single degree or whether the beneficiary may satisfy the requirement with multiple degrees.

The Office of Adjudications letter was written in response to a letter from an attorney who inquired whether, for purposes of 8 C.F.R. § 204.5(k)(2), a "foreign equivalent degree" is limited to a "foreign degree" or whether "foreign education" may count, "when no formal degree is conferred or a 3 year foreign degree combined with a diploma that is determined to be equivalent to a United States degree." In response, Mr. [REDACTED] stated:

You ask whether the reference to "a foreign equivalent degree" in 8 C.F.R. 204.5(k)(2) means that the *foreign equivalent advanced degree* must be in the form of a single degree. Despite the use of the singular "degree," it is not the intent of the regulations that only a single foreign degree may satisfy the equivalency requirement. Provided that the proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the requirement may be met.

(Emphasis added.)

Considering the Office of Adjudications letter, counsel asserts that the beneficiary has a "foreign equivalent degree" to a United States baccalaureate degree.

Counsel's assertions are not persuasive. First, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after three years of higher education. A bachelor's degree in a professional field of study, such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary medicine, generally requires four years of education. See generally Government

of India, Department of Education, *Higher Education in India, Academic Qualification Framework - Degree Structure*, (accessed on October 27, 2005), available at <http://www.education.nic.in/htmlweb/higedu.htm> (printed copy incorporated into the record of proceeding). If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably be deemed to be the “foreign equivalent degree” to a United States baccalaureate degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah* at 245. Based on the same reasoning, the beneficiary’s three-year Bachelor of Commerce degree from the University of Madras will not be considered the “foreign equivalent degree” to a United States baccalaureate degree in engineering, computer science, math or information science for purposes of this preference visa petition.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Finally, the letter from the Office of Adjudications is not persuasive. The succinct response of [REDACTED] specifically refers to “the foreign equivalent advanced degree” as the point of concern, rather than the phrase “United States baccalaureate degree or a foreign equivalent degree.” Accordingly, the response appears to specifically address the phrase “foreign equivalent degree” as it relates to the definition of advanced degree at 8 C.F.R. § 204.5(k)(2): “‘Advanced degree’ means any United States academic or professional degree or a foreign equivalent degree above the baccalaureate level.” [REDACTED] response is reasonable when considered in the context of a “foreign equivalent degree” to a United States advanced degree; by definition, an advanced degree is a degree above the baccalaureate level, thereby requiring multiple degrees.

However, if applied to the phrase “United States baccalaureate degree or a foreign equivalent degree” contained at 8 C.F.R. § 204.5(k)(2), the letter’s reasoning would lead to results directly contrary to the regulations, statute, and the intent of Congress. In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor’s degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor’s degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because neither the Act nor its legislative history indicates that bachelor’s or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor’s degree.*

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. Although the preamble to the publication of the final rule specifically dismissed the option of equating "experience alone" to the required bachelor's degree, the same reasoning applies to accepting an equivalence in the form of multiple lesser degrees, professional training, incomplete education without the award of a formal degree, or any other level of education deemed to be less than the "foreign equivalent degree" to a United States baccalaureate degree. Whether the equivalency of a bachelor's degree is based on work experience alone or on a combination of multiple lesser degrees, the analysis results in the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. As noted in the federal register, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to bachelor's degree will qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. In addition, a combination of degrees which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree does not meet the regulatory requirement of a foreign equivalent degree.

Furthermore, the Office of Adjudications letter is not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

As previously noted, the ETA-750 labor certification specifically requires a Master's degree in Engineering, Computer Science, Math or Information Sciences and two years of experience, or a baccalaureate in the same subjects and five years of experience. Based on the submitted evidence, the petitioner has not established that the beneficiary possesses a United States Master's degree in the above subjects or a foreign equivalent degree.¹ And as previously explained, the petitioner has not established that the beneficiary possesses the minimum alternate qualifications, a Bachelor of Science degree with five years of experience, as the beneficiary's three-year Bachelor of Commerce degree is not a "United States baccalaureate degree or a foreign equivalent degree" and we will not combine two degrees. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree and he does not meet the requirements set forth on the labor certification.

Moreover, the labor certification requires at least a bachelor's degree in a specific field. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). As discussed above, the combination of diplomas may not be accepted in lieu of a four-year degree. Moreover, although the evaluation combines the petitioner's two degrees as equivalent to a Bachelor of Science degree in computer science, the transcript for the beneficiary's three-year degree does not list any computer science courses. Thus, whatever classification we were to consider, the beneficiary does not meet the education requirements of the labor certification.

¹ The petitioner does possess a Master's degree in Political Science.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. The denial of this petition does not bar the filing of a new petition on behalf of the beneficiary under section 203(b)(3) of the Act as a skilled worker with more than two years of training and experience.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.